

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
DAVID SAFRAN,

Plaintiff,

v.

9:05-CV-0133
(TJM)(GHL)

WOODS, Supt. of Upstate Correctional Facility;
GLENN GOORD, Commissioner of New York State DOCS;
GEORGE PATAKI, Governor, New York State; SHERIFF,
Suffolk County,

Defendants.

APPEARANCES:

DAVID SAFRAN
Plaintiff, *pro se*
02-R-4535
Upstate Correctional Facility
Box 2001
309 Bare Hill Road
Malone, New York 12953

THOMAS J. McAVOY, SENIOR JUDGE

DECISION and ORDER

By Decision and Order of this Court filed March 8, 2005 *pro se* plaintiff David Safran was afforded a second opportunity to file an amended complaint which states a claim against the named defendants upon which relief may be granted by this Court pursuant to 42 U.S.C. § 1983, and which complies with the pleading requirements of the Federal Rules of Civil Procedure. Dkt. No. 7.¹

Plaintiff has not filed an amended complaint as directed by the Court. Rather, plaintiff filed a motion seeking to consolidate this action with a federal habeas corpus proceeding he initiated in this Court captioned *Safran v. Superintendent*, 9:05-CV-

¹ The Court granted plaintiff's *in forma pauperis* application. *Id.*

0132 (GLS/DRH) ("Safran I"). Dkt. No. 8. As in this case, plaintiff alleges in *Safran I* that he is illegally imprisoned because a valid "certificate of conviction" was not issued by the sentencing court, and seeks his immediate release from prison and monetary damages.

Rule 42(a) of the Federal Rules of Civil Procedure provides for the consolidation of actions pending before the court which involve "a common question of law or fact." Fed. R. Civ. P. 42(a).

By Order of District Judge Gary L. Sharpe filed June 1, 2005, *Safran I* was transferred to the United States District Court for the Eastern District of New York. *Safran I*, Dkt. No. 13.

Accordingly, because *Safran I* is not longer pending before the court, plaintiff's motion for consolidation is denied as moot.

Plaintiff is advised that the deadline for the filing of a second amended complaint in accordance with the prior Orders of this Court is hereby reset for **July 29, 2005**.

WHEREFORE, it is hereby

ORDERED, that plaintiff's motion to consolidate this action with *Safran I* (Dkt. No. 8) is denied as moot, and it is further

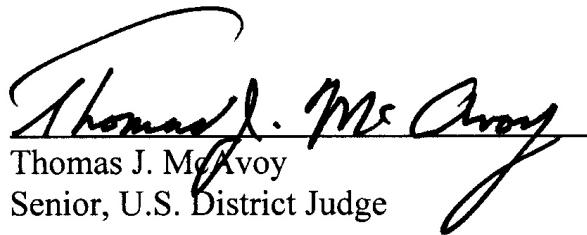
ORDERED, the deadline for the filing of a second amended complaint in accordance with the prior Orders of this Court is reset for **July 29, 2005**, and it is further

ORDERED, that if no second amended complaint is timely filed by plaintiff, the Clerk enter judgment dismissing this action without further order of this Court, and it is further

ORDERED, that upon the filing of a second amended complaint, the Clerk forward the file to the Court for further review, and it is further

ORDERED, that the Clerk serve a copy of this Order on the plaintiff by regular mail.

Dated: July 13, 2005



Thomas J. McAvoy
Senior, U.S. District Judge